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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 NEXIS RENE GOMEZ, No. C 13-0963 WHA (PR)
11 Petitioner, **ORDER TO SHOW CAUSE**
12 v.
13 CONNIE GIPSON,
14 Respondent.

15 _____ /
16 **INTRODUCTION**
17 Petitioner, a California prisoner incarcerated at Pelican Bay State Prison, filed this pro
18 se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 challenging his conviction
19 and sentence. He has paid the filing fee. For the reasons discussed below, respondent is
20 ordered to show cause why the petition should not be granted.

21 **STATEMENT**

22 Petitioner was convicted in Santa Clara County Superior Court of a number of sex
23 offenses and sentenced to a term of 90 years to life, plus 50 years, in state prison. The
24 California Court of Appeal and the California Supreme Court denied his appeals. His
25 subsequent habeas petitions to all three levels of the California courts were denied.

26 **ANALYSIS**

27 **A. STANDARD OF REVIEW**

28 This court may entertain a petition for writ of habeas corpus "in behalf of a person in

1 custody pursuant to the judgment of a State court only on the ground that he is in custody in
2 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose*
3 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading
4 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ
5 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state
6 court must "specify all the grounds for relief which are available to the petitioner ... and shall
7 set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of
8 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. "[N]otice' pleading is not
9 sufficient, for the petition is expected to state facts that point to a 'real possibility of
10 constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
11 688, 689 (1st Cir. 1970)).

12 **B. LEGAL CLAIMS**

13 Petitioner claims (1) that his sentence violates his rights to due process and under the
14 Sixth Amendment because he received multiple sentences for the same crime and conduct; and
15 (2) he received ineffective assistance of counsel in four different respects. When liberally
16 construed, these claims are sufficient to warrant an answer from respondent.

17 **CONCLUSION**

18 1. The clerk shall mail a copy of this order and the petition with all attachments to the
19 respondent and the respondent's attorney, the Attorney General of the State of California. The
20 clerk shall also serve a copy of this order on the petitioner.

21 2. Respondent shall file with the court and serve on petitioner, within ninety-one days
22 of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
23 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
24 granted based on the claims found cognizable herein. Respondent shall file with the answer and
25 serve on petitioner a copy of all portions of the state trial record that have been transcribed
26 previously and that are relevant to a determination of the issues presented by the petition.

27 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
28 court and serving it on respondent within twenty-eight days of the date the answer is filed.

United States District Court

For the Northern District of California

1 3. Respondent may file, within ninety-one days, a motion to dismiss on procedural
2 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
3 Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file
4 with the court and serve on respondent an opposition or statement of non-opposition within
5 twenty-eight days of the date the motion is filed, and respondent shall file with the court and
6 serve on petitioner a reply within fourteen days of the date any opposition is filed.

7 4. Petitioner is reminded that all communications with the court must be served on
8 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must
9 keep the court informed of any change of address and must comply with the court's orders in a
10 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
11 pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772
12 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

13 **IT IS SO ORDERED.**

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15 Dated: April _____, 2013.
16 5/1/2013



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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE